

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO,

As representative of

THE COMMONWEALTH OF PUERTO  
RICO, THE EMPLOYEE'S  
RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE  
COMMONWEALTH OF PUERTO RICO,  
AND THE PUERTO RICO PUBLIC  
BUILDINGS AUTHORITY,

Debtors.

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**DESIGNATION OF THE RECORD TO BE CERTIFIED AND MADE AVAILABLE TO THE  
CIRCUIT CLERK AND STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

**TO THE HONORABLE COURT:**

**COME NOW**, creditor Suiza Dairy Corp. ("Suiza"), through the undersigned counsel very respectfully avers and prays as follows:

1. That on February 3<sup>rd</sup>, 2022, a timely Notice of Appeal was filed to the United States Court of Appeal for the First Circuit from Proposed Findings of Facts and Conclusions of Law Related document: **19570**, and proposed confirmation order confirming Modified 8 Plan of Adjustment Related document: **19568** entered by Honorable Laura Taylor Swaine in the above captioned case.

2. According to Rule 6(2)(B) of the Federal Rules of Appellate Procedure, after filing the notice of appeal the appellant must file with the clerk possessing the record assembled in accordance with

Bankruptcy Rule 8009 -and serve on the appellee - a statement of the issues to be presented on appeal and a designation of the record to be certified and made available to the circuit clerk.

3. The issues to be presented on appeal are as follows:

a. Whether the Bankruptcy Court erred in ruling that the "*Plan's impairment of Suiza's claim does not violate the Takings Clause of the Constitution of the United States for the simple reason that, prior to receiving a final judgment on its Takings Clause claim, Suiza (and other plaintiffs) entered into a stipulation, under which the parties agreed to abide by certain regulatory accrual formulae set forth therein.*"<sup>1</sup>

b. Whether the Bankruptcy Court erred in affirming that *Suiza's* claim is not on account of a regulatory taking pursuant to the Takings Clause of the U.S. Constitution.

c. Whether the Bankruptcy Court erred in not ruling that *Suiza* has a valid proof of claim on account of a "*Non-Dischargeable Regulatory Accrual Claim for U.S. Constitution Violations Involving Takings Clause*" that has not been objected (and is deemed allowed as filed) and the Plan may not change the nature of the Claim without going through the objection to claim process.

d. Whether the Bankruptcy Court erred in not ruling that the Plan unfairly discriminates against *Suiza Dairy*, who has not consented or voted in favor of the Plan, in as much as it is paying 100% to other

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<sup>1</sup> See Dkt. 19812, p. 115. Internal citations omitted.

takings claims and proposes to pay only 50% to Suiza Dairy.

e. Whether the Bankruptcy Court erred in confirming a *Plan that improperly provides a discharge to non-debtor parties in relation to Suiza's claim.*

The following is the Appellant's Designation of Items to be included in the record on Appeal:

Date	Docket	Description
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05/11/2021	16741	
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Disclosure Statement for the Third Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

05/11/2021	16740	
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Third Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

06/15/2021	17013	
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Objection to Disclosure Statement and or Plan at Dkts.16740 and 16741  
Related document.

07/27/2021	17517	
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Disclosure Statement for the Sixth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

07/27/2021 17516

Sixth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

07/27/2021 17526

Objection to Disclosure Statement

07/28/2021 17552

MOTION - Omnibus Reply of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of Puerto Rico, and the Puerto Rico Electric Power Authority to Objections to Sixth Amended Disclosure Statement.

07/30/2021 17628

Disclosure Statement for the Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

07/30/2021 17627

Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

8/2/2021 17640

Order Establishing Procedures And Deadlines Concerning Objections To Confirmation And Discovery In Connection Therewith. Debtors' 16757 Motion is GRANTED and objections are OVERRULED except to the extent provided

herein.

08/10/2021 17748

Notice intent to object to confirmation and discovery.

10/19/2021 18593

Objection to Confirmation of the Seventh Plan of Adjustment Related document.

10/22/2021 18651

Objection to Confirmation Order Related document.

10/25/2021 18712

MOTION to inform Order at Docket 18502-3 Re: 18502 Order (Attachments: # 1 Exhibit C - Exhibit Cover Sheet # 2 Exhibit 2 - Amended Opinion and Order Dkt 2289 # 3 Exhibit 3 -Opinion and Order Dkt 480 # 4 Exhibit 1 - Intentionally Blank).

10/28/2021 18874

REPLY to Response to Motion / Omnibus Reply of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority to Objections to Seventh Amended Title III Joint Plan of Adjustment Re: 17627 MOTION - Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. filed by The

Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, et al. (Attachments: # 1 Exhibit A - Objections # 2 Exhibit B - Documents Filed in Response to the Plan (Excluding Objections) # 3 Exhibit C - Omnibus Reply Chart (Plan Objections) # 4 Exhibit D - Omnibus Reply Chart (Confirmation Order Objections) # 5 Exhibit E - Prager Transcript Excerpts Exhibit).

11/03/2021 19053

Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

11/05/2021 19087

Objection to Reply To Omnibus Reply Of The Commonwealth Of Puerto Rico, The Employees Retirement System Of The Government Of The Commonwealth Of Puerto Rico, And The Puerto Rico Public Buildings Authority To Objections To Seventh Amended Title Iii Joint Plan Of Adjustment (DKT. 18,874).

11/07/2021 19114

Motion Submitting Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. Re: 19053 MOTION - Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

11/07/2021 19118

Notice of Filing of Revised Proposed Order and Judgment Confirming

Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. Re: 19053 MOTION - Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

11/12/2021 19184

Motion Submitting Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

11/14/2021 19197

Minute Entry for proceedings held before Judge Laura Taylor Swain and Magistrate Judge Judith G. Dein. 4th day of Confirmation Hearing held on 11/12/2021. Witnesses for the Oversight Board: Andrew Wolfe, Adam Chepenik, Juan Santambrogio, Marti Murray, David Brownstein, Jay Herriman. Witness for the Retiree Committee: Simon Johnson. Witnesses for Peter Hein: Mark Elliot, Peter Hein. Parties rested. EXHIBITS: Monolines 1, 2, 3, 4, 45, 52, 53. Retiree Committee 1. U.S. Bank A, B, C, D, E, F, Q, R. Suiza Dairy 2 and 3. Hein A through MMMM. Stipulation 1.

11/16/2021 19279

Objection to Proposed Confirmation Order Related document:19118 Notice filed by The Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, et al.

11/21/2021 19323

Motion Submitting Modified Eighth Amended Title III Joint Plan of

Adjustment of the Commonwealth of Puerto Rico, et al.

11/24/2021 19361

Motion Compliance with Order.

11/28/2021 19365

Motion Submitting Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

11/28/2021 19366

Notice of Filing Proposed Findings of Fact and Conclusions of Law in Connection with Confirmation of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

11/28/2021 19368

Notice of Filing of Revised Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/01/2021 19397

Objection to Proposed Finding of Laws and Conclusions.

12/01/2021 19398

Objection to Proposed Confirmation Order Related document.



12/06/2021

19426

Omnibus Reply of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority, by and through the Financial Oversight and Management Board for Puerto Rico, to Objections to (I) Proposed Findings of Fact and Conclusions of Law and (II) Revised Proposed Confirmation Order.

12/06/2021

19427

Notice of Filing of Revised Proposed Findings of Fact and Conclusions of Law in Connection with Confirmation of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/07/2021

19431

Objection to AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AT DKT. NO. 19,427.

12/14/2021

19517

Order Regarding Certain Aspects Of Motion For Confirmation Of Modified Eighth Amended Title III Joint Plan Of Adjustment Of The Commonwealth Of Puerto Rico, Et Al.

12/17/2021

19542

Motion Submitting Certified Translation of Exhibit 9 to Dkt. 19,361

12/21/2021 19567

Motion Submitting Response of the Financial Oversight and Management Board in Accordance with Order Regarding Certain Aspects of Motion for Confirmation of Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/21/2021 19568

Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/21/2021 19569

Notice of Filing (I) Corrected Debtors' Exhibits 127 and 128 and (II) Oversight Board Certifications of Modified Plans of Adjustment, in Connection with Response of the Financial Oversight and Management Board in Accordance with the Order Regarding Certain Aspects of Motion for Confirmation of Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/21/2021 19570

Notice of Filing Revised Proposed Findings of Fact and Conclusions of Law in Connection with Confirmation of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/21/2021 19571

Notice of Filing of Revised Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/21/2021 19572

Notice of Filing of Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

12/21/2021 19574

Motion Submitting Corrected Response of the Financial Oversight Board in Accordance with Order Regarding Certain Aspects of Motion for Confirmation of Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico et al.

12/23/2021 19601

Objection to Confirmation of Modified 8 Plan of Adjustment.

12/23/2021 19602

Objection to Proposed Confirmation Order.

12/23/2021 19603

Objection to Motion in Response to Order.

12/23/2021 19604

Objection to Proposed Findings of Facts and Conclusions of Law.

01/14/2022 19784

Motion Submitting Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.

01/18/2022 19813

Order And Judgment Confirming Modified Eighth Amended Title Iii Joint Plan Of Adjustment Of The Commonwealth Of Puerto Rico, The Employees Retirement System Of The Government Of The Commonwealth Of Puerto Rico, And The Puerto Rico Public Buildings Authority.

01/18/2022 19812

Findings Of Fact And Conclusions Of Law In Connection With Confirmation Of The Modified Eighth Amended Title Iii Joint Plan Of Adjustment Of The Commonwealth Of Puerto Rico, The Employees Retirement System Of The Government Of The Commonwealth Of Puerto Rico, And The Puerto Rico Public Buildings Authority.

19114, 19184, 19323, 19365, 19568, 19784

WHEREFORE, it is most respectfully requested from this Honorable Court that it take notice of the above for any and all relevant

purposes and that it transmits a copy of the designated items to the Circuit clerk.

FALTAN COSAS. FALTA EL MOTION IN COMPLIANCE WITH ORDER QUE RADICAMOS NOSOTROS. FALTA EL PLAN ORIGINAL. CREO QUE FALTA UNA OBJECION DE LAS PRIMERAS QUE RADICAMOS, PERO HAY QUE COTEJAR.

NO SE DEBEN INCUIR LOS "CERTIFICATE OF SERVICE". ELIMINE UNO, PERO HAY MAS. Tampoco se tiene que incluir la moción para paginas adicionales.

Por ultimo, los márgenes están mal. Las letras están hasta el borde de la pagina (CREO).

**CERTIFICATE OF SERVICE:** I hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all interested parties and CM/ECF participants and to the clerk of the Court of Appeals for the First Circuit.

In San Juan, Puerto Rico this 1<sup>st</sup> day of March of 2022.

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